

ORIGINAL



0000035764

BEFORE THE ARIZONA CORPORATION

RECEIVED

**COMMISSIONERS**

JEFF HATCH-MILLER, CHAIRMAN  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

2005 DEC 16 A 9:31

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF  
PALO VERDE UTILITIES COMPANY FOR AN  
EXTENSION OF ITS EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY.

Docket No. SW-03575A-05-0470

IN THE MATTER OF THE APPLICATION OF  
SANTA CRUZ WATER COMPANY FOR AN  
EXTENSION OF ITS EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY.

Docket No. W-03576A-05-0470

**APPLICANTS' COMMENTS IN SUPPORT  
OF ORDER PRELIMINARY**

Pursuant to the direction of the assigned Administrative Law Judge ("ALJ"), Santa Cruz Water Company, LLC and Palo Verde Utilities Company, LLC (collectively, the "Applicants"), submit these comments in support of the Commission granting an "Order Preliminary" to a Certificate of Convenience and Necessity ("CC&N"). An Order Preliminary will provide certainty to customers, other agencies, and the Applicants. Such an order is the next logical step in transferring service in the area into a viable, stable, commission-regulated structure. The ALJ also requested that the Applicants provide copies of (1) the complaint in *Lennar Communities Development, Inc. v. Sonoran Utility Services, LLC et al*; and (2) the notice of claim filed by Sonoran Utility Services, LLC against Pinal County et al. These documents are attached as Attachments A and C, respectively.

**I. BACKGROUND.**

The Applicants seek a CC&N for the area currently served by the 387 Water Improvement District and the 387 Wastewater Improvement District (collectively, "387 Districts"). The 387 Districts are "county improvement districts" formed by Pinal County under A.R.S. § 48-901 et seq.

1 The 387 Districts entered into 30 year "management contracts" with Sonoran Utility Services,  
2 LLC ("Sonoran"). Sonoran was apparently owned or controlled by George Johnson and Connelly  
3 Wolfswinkel. Under the management contracts, Sonoran had complete authority to operate,  
4 maintain and manage the facilities and operations of the 387 Districts. Further, under the  
5 management contracts, Sonoran owned all of the utility assets of the 387 Districts.

6 Unfortunately, Sonoran was not able to fulfill its duties under the management contracts.  
7 Sonoran could not deliver an adequate level of service to the customers in the 387 Districts. For  
8 example, the wastewater treatment plant for the 387 Districts was not completed in time to serve  
9 the customers who moved into the area. Moreover, the water from the 387 District's wells did not  
10 meet state and federal standards. Sonoran's inability to provide adequate service created an  
11 emergency. Faced with this emergency, the City of Maricopa, the Arizona Department of  
12 Environmental Quality ("ADEQ") and the Arizona Department of Water Resources ("ADWR")  
13 sought a solution.

14 At the request of the City of Maricopa, ADEQ, ADWR, and Pinal County, and with the  
15 support of Staff, the Applicant's parent, Global Water Resources, LLC ("Global") agreed to solve  
16 these problems. Global provided an emergency interconnect into the systems of the 387 Districts.  
17 Global purchased the utility assets of Sonoran. Then, Sonoran, Global and the 387 Districts  
18 agreed to assign the management contracts from Sonoran to Global. Thus, Global currently  
19 provides service within the 387 service area under the management contracts though wholesale  
20 service by the Applicants.

21 This arrangement, while solving the immediate emergency, is not intended as a long-term  
22 solution. Instead, Global desires that its subsidiaries, the Applicants, provide service within the  
23 387 service area as public service corporations subject to the regulation of the Commission  
24 pursuant to a CC&N issued by the Commission. As shown by the Statement of Terry Doolittle<sup>1</sup>,

---

25  
26 <sup>1</sup> See Notice of Filing of Statement of Terry Doolittle, dated December 13, 2005. Mr. Doolittle  
27 serves as the Pinal County Manager and as the Superintendent of the 387 Districts. *Id.* The 387  
Districts' support is also shown by Mr. Doolittle's letter dated June 28, 2005. (Ex. A-1 at Ex. 10).

1 Pinal County and the 387 Districts also desire that the Applicants provide service under a CC&N.  
2 Further, numerous landowners in the 387 service area signed petitions requesting that the  
3 Commission grant a CC&N to the Applicants. (*See* Ex. A-1 [Application] at Ex. 2). These  
4 landowners owned the vast majority of the land in the 387 service area on or about April 1, 2005.

5 However, as Mr. Doolittle explained, the 387 Districts desire that the CC&N not become  
6 effective until the 387 Districts are dissolved. Mr. Doolittle noted that the Districts likely cannot  
7 be dissolved until certain outstanding claims are resolved. After consulting with Pinal County and  
8 the 387 Districts, the Utilities Division ("Staff") and the Applicants agreed to recommend that the  
9 Commission issue an Order Preliminary. Under the Order Preliminary, the Commission grants a  
10 CC&N once certain conditions are satisfied. Staff and the Applicants agreed to a list of  
11 conditions. (Ex. S-3). One of these conditions is that the 387 Districts be dissolved. (*Id.*).

## 12 **II. LITIGATION AGAINST THE 387 DISTRICTS.**

13 There are two claims against the 387 Districts. First, on February 14, 2005, Lennar  
14 Communities Development, Inc. (Lennar) filed a complaint against Sonoran and George Johnson  
15 in Maricopa County Superior Court. Lennar's complaint also named Pinal County, the 387  
16 Districts, and the members of the Pinal County Board of Supervisors as defendants. Lennar filed  
17 its First Amended Complaint on March 1, 2005. A copy of Lennar's First Amended Complaint is  
18 attached as Attachment A.<sup>1</sup> The First Amended Complaint alleges numerous claims against  
19 Sonoran and Johnson for failing to provide service to Lennar under a contract between Lennar and  
20 Sonoran. Counts 7, 8 and 11 are directed against the 387 Districts and Pinal County. Count 7  
21 alleges a breach of fiduciary duty, and Count 8 alleges a breach of statutory duty. Count 11 seeks  
22 declaratory judgment against all defendants.

---

26 <sup>1</sup> Because the attachments to the First Amended Complaint exceed 100 pages, they have not been  
27 included in Attachment A.

1 On December 5, 2005, Judge Hilliard issued a minute entry granting a change of venue to  
2 Pinal County Superior Court, and ordering that the case be transferred to Pinal County Superior  
3 Court. (Attachment B).

4 The second claim is a Notice of Claim filed by Sonoran against Pinal County, the 387  
5 Districts, the City of Maricopa, and certain public officials. This Notice of Claim is dated October  
6 7, 2005, and is attached as Attachment C. Sonoran's Notice of Claim alleges breach of contract,  
7 violation of due process and equal protection and numerous other claims. The Notice of Claim  
8 alleges that Pinal County, the 387 Districts, and the City of Maricopa "forced" Sonoran to "give up  
9 its valuable contract rights and business expectancies." (Attachment C at 8). Sonoran alleges that  
10 the sale to Global "due to circumstances forced by the unlawfully acting parties, resulted in  
11 Sonoran not recovering all the value it owned and controlled as a result of the Management  
12 Agreements and other inducements and promises." (*Id.*). Sonoran seeks \$ 83 million in damages.  
13 (*Id.*).

14 Importantly, as Mr. Hill testified, the Applicants, Global, and Global's principals are NOT  
15 named as defendants in either of these claims. Global's and the Applicants' only involvement was  
16 to provide a solution to the emergency situation caused by Sonoran's deficiencies. Global did so  
17 by buying Sonoran's assets and assuming Sonoran's duties under the management contract. The  
18 Applicants assisted by allowing the use of their permits and facilities. The Applicants now seek to  
19 make the solution permanent by receiving CC&Ns from the Commission.

### 20 **III. ORDERS PRELIMINARY.**

21 In recent times, the Commission has infrequently issued Orders Preliminary. *See Utility*  
22 *Source, LLC*, Decision No. 67446 (January 5, 2005) at Finding of Fact No. 24 ("Although the  
23 statute permits the issuance of an Order Preliminary, the process has not been used by the  
24 Commission for a number of years.") But the Order Preliminary procedure can be used in  
25 appropriate circumstances. *Id.* at Finding of Fact No. 25.

26 The Order Preliminary procedure is expressly authorized by statute. *See* A.R.S. § 40-  
27 282(D). When faced with a request for an order preliminary, the Commission may grant the Order

1 Preliminary and declare that it will “issue the desired certificate, upon terms and conditions it  
2 designates.” *Id.* In the alternative, the Commission can simply issue the CC&N conditioned on  
3 the subsequent satisfaction of specified items. *Id.*; see also *City of Tucson v. Arizona Corp.*  
4 *Comm’n*, 1 Ariz.App. 110, 112, 399 P.2d 913, 915 (1965).

5 If the Commission issues an Order Preliminary, once the applicant presents evidence that  
6 the conditions are satisfied, the Commission “shall issue the certificate.” A.R.S. § 40-282(D).  
7 Once the conditions are met, the Applicant “file[s] proof that the conditions have been met.”  
8 *Johnson Utilities, LLC*, Decision No. 67586 (February 15, 2005) at Finding of Fact 18. Staff then  
9 verifies that the conditions are met. *Id.* Staff then files a proposed order, which the Commission  
10 considers at an Open Meeting. See *id.* This second order is the “order formally granting the  
11 CC&N.” See *Morristown Water Co.*, Decision No. 58504 (January 13, 1994) at Finding of Fact  
12 No. 1 (describing Decision No. 44820, November 27, 1974). As the Commission explained to the  
13 Arizona Supreme Court, if an Order Preliminary is issued, once evidence is submitted that the  
14 condition is satisfied, the order issuing the final CC&N is “simply a ministerial act of issuing the  
15 certificate by the commission upon the routine showing that the requirements... were met.”  
16 *Paradise Valley Water Co. v. Arizona Corp. Comm’n*, 92 Ariz. 391, 393-94, 377 P.2d 768, 769-70  
17 (1963). The Arizona Supreme Court agreed, ruling that a competing applicant should have  
18 appealed the Order Preliminary, rather than the final CC&N order. *Id.*

19 **IV. THE APPLICANTS SATISFY THE PUBLIC INTEREST TEST.**

20 The Public Interest is clearly served by the Applicants providing service to the 387 service  
21 area. This is demonstrated by:

- 22 ● The requests for service by the Landowners (Ex. A-1 at Ex. 2);
- 23 ● The support of Pinal County (Statement of Terry Doolittle; Ex. A-1 at Ex. 10);
- 24 ● The support of the 387 Districts (*Id.*);
- 25 ● The support of ADEQ and ADWR (Mr. Hill’s Testimony); and
- 26 ● The support of the City of Maricopa (Ex. A-1 at Ex. 10, Letter from Mr. Rick Buss,  
27 City Manager, City of Maricopa, Dated June 27, 2005).

1 The unanimous support from so many public agencies is remarkable. This reflects the  
2 extraordinary efforts taken by Global and its subsidiaries to remedy the problems created by  
3 Sonoran.

4 There is no doubt that the Applicants have the financial, managerial, and technical  
5 expertise necessary to serve the 387 service area. The Applicants successfully provide service in a  
6 fast-growing area adjacent to the 387 service area. Mr. Hill testified that the public interest  
7 supports granting the Applicants a CC&N for the following reasons:

- 8 • Need. (There is extraordinary growth in this part of Pinal County);
- 9 • Proximity. (No other entity has facilities nearby to provide this service);
- 10 • Technical Capability (undisputed);
- 11 • Financial Resources (undisputed);
- 12 • Managerial Resources (undisputed);
- 13 • Consolidated Utility; (the Applicants offer the "significant benefits" of integrated  
14 water and sewer providers); and
- 15 • Rates (Global voluntarily asked the 387 Districts to lower rates to the Applicants'  
existing levels).

16 **V. THE COMMISSION SHOULD ISSUE AN ORDER PRELIMINARY.**

17 The Applicants have made an overwhelming showing that the public interest would be  
18 served by granting them a CC&N. The only thing that stands in the way is the two claims pending  
19 against the 387 Districts and the ultimate dissolution of the 387 Districts. It would contravene the  
20 public interest for the Commission to allow Sonoran, having caused the problem, to hold up the  
21 solution by its demand for \$83 million. The Commission should take action now to move the  
22 process forward. It can do so by issuing an Order Preliminary.

23 An Order Preliminary is supported by many factors. First, this docket involves the unique  
24 circumstance of transferring service from two improvement districts to two public service  
25 corporations. Unlike other CC&N extensions, the timing of the transfer is impacted by potential  
26 legal requirements regarding dissolution of such districts. Staff agrees that this is a "unique  
27

1 situation” that supports the issuance of an Order Preliminary. (See “Staff’s Reasons Re: Order  
2 Preliminary,” filed December 13, 2005).

3 Second, as Mr. Hill testified, the “current situation” is “precarious.” Global is providing  
4 service under the management contracts only as a stop-gap measure. This service should be placed  
5 on a firmer foundation. An Order Preliminary would reduce uncertainty by guaranteeing that an  
6 CC&N will be issued once the conditions are satisfied. As Mr. Hill testified, the Commission  
7 should send a signal to the community, and to ADEQ and ADWR that the CC&N process is not  
8 going to be de-railed by the claims against the 387 Districts.

9 Third, Global and the Applicants are currently serving the area using the facilities and  
10 permits of the Applicants. Other regulatory agencies are tolerating this anomaly only because they  
11 expect a CC&N to be issued and service to be provided by a regulated public service corporation.  
12 For example, ADWR has temporarily allowed developers in the 387 service area to be covered  
13 under the Applicants’ Designation of Assured Water Supply. An order denying a CC&N would  
14 disrupt the complex and temporary arrangements made to serve the 387 service area.

15 Fourth, as Mr. Hill testified, there is a real need in the 387 service area. Customers are  
16 “living in homes today.” Indeed, there are more than 2,700 customers in the 387 service area  
17 today, and more are being added every week. The phenomenal growth in the area shows no signs  
18 of abating. These thousands of present and future customers deserve the certainty of knowing that  
19 their service will be provided by an established public service corporation subject to the regulation  
20 of the Commission, rather than the uncertain and unprecedented service being temporarily  
21 provided under the management agreement.

22 This case is similar to *Johnson Utilities, supra*. In that case, the existing service provider,  
23 Arizona Utility Supply and Services, LLC (AUSS), was unable to provide sewer service. AUSS  
24 filed bankruptcy. Johnson agreed to provide wholesale wastewater treatment services to AUSS,  
25 and to request that the AUSS service territory be added to Johnson’s CC&N. The involvement of  
26 numerous regulatory agencies, and the bankruptcy court, made the situation complex. The  
27 Commission decided to grant an Order Preliminary, noting that “[g]ranting an Order Preliminary

1 will enable Johnson to move forward with its plans for acquiring the AUSS assets and securing  
2 necessary regulatory approvals, while maintaining the Commission's authority to ensure that all  
3 requirements have been met." *Johnson Utilities, supra* at Finding of Fact 26.

4 Like *Johnson Utilities*, in this case, the Commission can enable a utility to "move forward"  
5 with a plan to solve a substantial public problem while still maintaining the Commission's  
6 authority. Like *Johnson Utilities*, the Applicants have stepped forward to solve an emergency  
7 situation. Like *Johnson Utilities*, securing all the necessary regulatory approvals will be a complex  
8 task. The only material difference is that in *Johnson Utilities*, the failing utility (AUSS) was  
9 subject to the Commission's authority, and its customers thus had some protections. Here, the  
10 failing utility (Sonoran) was not subject to the Commission's authority. By granting an Order  
11 Preliminary, and eventually, a final CC&N, the Commission will ensure that these customers  
12 receive the protection of Commission regulation.

13 **VI. CONCLUSION.**

14 For these reasons, the Applicants request that the Commission issue an Order Preliminary  
15 subject to conditions described in Exhibit S-3.

16 RESPECTFULLY submitted this 16<sup>th</sup> day of December 2005.

17 ROSHKA DEWULF & PATTEN, PLC

18  
19  
20 By



21 Michael W. Patten  
22 One Arizona Center  
23 400 East Van Buren Street, Suite 800  
24 Phoenix, Arizona 85004  
25 (602) 256-6100  
26  
27



ROSHKA DeWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Original + 15 copies of the foregoing  
2 filed this 16<sup>th</sup> day of December 2005, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed  
8 this 16<sup>th</sup> day of December 2005, to:

9 Yvette Kinsey, Esq.  
10 Administrative Law Judge  
11 Hearing Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 David Ronald  
16 Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, Arizona 85007

20 Ernest G. Johnson, Esq.  
21 Director, Utilities Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, Arizona 85007

25 Kenneth C. Sundlof, Jr., Esq.  
26 Jennings, Strouss & Salmon, P.L.C.  
27 The Collier Center, 11<sup>th</sup> Floor  
201 E. Washington Street  
Phoenix, Arizona 85004

Karen L. Peters, Esq.  
Squire Sanders & Dempsey, L.L.P.  
Two Renaissance Square  
40 North Central Avenue  
Suite 2700  
Phoenix, Arizona 85004-4498

By 

ATTACHMENT

"A"

1 **BEUS GILBERT PLLC**  
2 ATTORNEYS AT LAW  
3 4800 NORTH SCOTTSDALE ROAD  
4 SUITE 6000  
5 SCOTTSDALE, ARIZONA 85251  
6 TELEPHONE (480) 429-3000

MICHAEL K. JEANES, CLERK

RECEIVED CCC  
NIGHT DEPOSITORY

05 MAR -1 PM 5:13

FILED  
BY M. LARTZ, DEP.

5 Leo R. Beus/AZ Bar No. 002687  
6 Britton M. Worthen/AZ Bar No. 020739  
7 Linnette R. Flanigan/AZ Bar No. 019771

8 Attorneys for Plaintiff

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 LENNAR COMMUNITIES  
12 DEVELOPMENT, INC., an Arizona  
13 corporation,

14 Plaintiff,

15 vs.

16 SONORAN UTILITY SERVICES, L.L.C.,  
17 an Arizona limited liability company;  
18 GEORGE H. JOHNSON and JANE DOE  
19 JOHNSON, husband and wife;  
20 BOULEVARD CONTRACTING  
21 COMPANY, INC., an Arizona corporation;  
22 PINAL COUNTY BOARD OF  
23 SUPERVISORS, a political subdivision of  
24 the State of Arizona; LIONEL D. RUIZ, in  
25 his capacity as a member of the Pinal  
County Board of Supervisors; SANDIE  
SMITH, in her capacity as a member of the  
Pinal County Board of Supervisors; DAVID  
SNIDER, in his capacity as a member of the  
Pinal County Board of Supervisors;  
JIMMIE KERR, in his capacity as a former  
member of the Pinal County Board of  
Supervisors; THE 387 WATER

Case No.: CV2005-002548

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

(Breach of Contract; Negligent  
Misrepresentation; Fraud; Anticipatory  
Breach of Contract; Breach of Fiduciary  
Duty; Breach of Statutory Duties; Third  
Party Beneficiary Claim for Breach of  
Contract; Declaratory Judgment)

1 IMPROVEMENT DISTRICT, a Pinal  
2 County Improvement District and a political  
3 subdivision of the State of Arizona; THE  
4 387 WASTEWATER IMPROVEMENT  
5 DISTRICT, a Pinal County Improvement  
6 District and a political subdivision of the  
7 State of Arizona,

8 Defendants.

9 For its complaint against Defendants, Plaintiff alleges as follows:

10 **PARTIES, JURISDICTION AND VENUE**

11 1. Plaintiff, Lennar Communities Development, Inc. ("Lennar"), is an Arizona  
12 corporation licensed and doing business within the State of Arizona. Lennar's principal  
13 offices are located within Maricopa County, Arizona.

14 2. Upon information and belief, Defendant Sonoran Utility Services, L.L.C.  
15 ("Sonoran") is an Arizona limited liability company doing business within the State of  
16 Arizona. Sonoran's principal offices are located within Maricopa County, Arizona.

17 3. Upon information and belief, Defendants George M. Johnson and Jane Doe  
18 Johnson are husband and wife and live within Maricopa County, Arizona. Upon information  
19 and belief, all acts alleged herein were conducted for the benefit of the marital community.

20 4. George Johnson ("Johnson") is the manager of Sonoran. In committing the  
21 acts alleged herein, Johnson was acting on behalf of and as an agent of Sonoran. Sonoran is  
22 liable for the acts of Johnson, as alleged herein.

23 5. Boulevard Contracting Company, Inc. ("Boulevard"), is an Arizona  
24 corporation doing business within the state of Arizona. Boulevard's principal offices are  
25 located within Maricopa County, Arizona.

1           6.     Upon information and belief, George Johnson is the president of Boulevard  
2 Contracting. In committing the acts alleged herein, Johnson was acting on behalf of and as  
3 an agent of Boulevard. Boulevard is liable for the acts of Johnson, as alleged herein.

4           7.     The 387 Water Improvement District and the 387 Wastewater Improvement  
5 District (hereinafter collectively referred to as the 387 Districts) are improvement districts  
6 organized pursuant to Arizona Revised Statutes §48-901, et seq. At all relevant times, the  
7 387 Districts were acting pursuant to the authority granted to them by Defendant Pinal  
8 County and Defendant Pinal County Board of Supervisors.

9  
10          8.     Lionel D. Ruiz, Sandie Smith, David Snider and Jimmie Kerr at all relevant  
11 times were acting in their capacity as members of the Pinal County Board of Supervisors.

12          9.     Defendant Pinal County Board of Supervisors is a political subdivision of the  
13 State of Arizona. Hereinafter, the Pinal County Board of Supervisors, Lionel D. Ruiz,  
14 Sandie Smith, David Snider and Jimmie Kerr shall be collectively referred to as the Pinal  
15 County Board of Supervisors.

16          10.    Defendant Pinal County Board of Supervisors is authorized to create  
17 improvement districts.

18  
19          11.    At all relevant times, Defendant Pinal County Board of Supervisors served on  
20 the Board of Directors of the 387 Districts and directed the actions of the 387 Districts. At  
21 all relevant times, the Board of Supervisors control the acts and conduct of the 387 Districts.  
22 As a result of this control, the Board of Supervisors is liable for any and all acts and  
23 omissions of the 387 Districts.

24          12.    Jurisdiction and venue are proper in this Court.  
25

**GENERAL FACTUAL ALLEGATIONS**

13. On or about 24 January 2002, Lennar, a developer, entered into a Contract for Purchase of Land and Escrow Instructions to purchase unimproved real property owned by HAM Maricopa, LLC located in what is now known as the City of Maricopa, State of Arizona (hereinafter referred to as "the Property").

14. At all relevant times, it was anticipated that the Property would be divided into various lots, for purposes of erecting residential homes once escrow had closed.

15. The Property was located in an area of Maricopa that did not have water and/or wastewater treatment services.

16. In order to secure both water and wastewater services, Lennar and other landowners in the area began to negotiate with two existing utility providers, Palo Verde and Santa Cruz, regarding the provision of water and wastewater services to the subject property and surrounding areas. However, Palo Verde and Santa Cruz were not attractive utility providers because they were owned by a substantial landowner in the subject area that would be serviced by their facilities.

17. Lennar and the other area landowners looked into the formation of an improvement district for the provision of utility services. One of the area landowners, Miller Holdings, facilitated a meeting at Lennar's office with Defendant Johnson regarding forming an improvement district for utility services with Johnson's company, Sonoran, as the utility provider.

1           A.    JOHNSON INDUCES THE LANDOWNERS TO FORM THE  
2                    IMPROVEMENT DISTRICT

3           18.   During this initial contact with Lennar and the other landowners in December,  
4           2002, Johnson represented to Lennar and the other landowners that the Pinal County  
5           Manager and Pinal County Board of Supervisors would support him as the utility provider  
6           for the improvement district if it were formed.

7           19.   Johnson also represented to Lennar and the other landowners that he had a  
8           good rapport with the Pinal County Board of Supervisors and Pinal County Manager.

9           20.   During the initial meeting in December, 2002 with Johnson and the other  
10          landowners, Lennar expressed its concerns about entering into a contract with a utility  
11          provider that was also a landowner in the service area, such as Palo Verde and Santa Cruz.  
12          In response to Lennar's concerns, Johnson represented to Lennar and the other landowners  
13          that neither he nor his company owned any property in the service area and that he was only  
14          there to provide utility services.

15          21.   During this December, 2002 meeting, Johnson intentionally fraudulently  
16          omitted to disclose to Lennar and the other landowners that he had a partner in the business.  
17          Johnson also fraudulently omitted to disclose that his partner controlled and/or otherwise  
18          held an interest in a significant amount of property in the subject service area.

19          22.   In another meeting on or about December 12, 2002, with Lennar and the other  
20          area landowners, Johnson made additional promises as set forth below in order to induce the  
21          parties into signing petitions to form an improvement district and abandon further  
22          negotiations with any existing utility providers.  
23  
24  
25

1           23.    At the December 12, 2002 meeting, Johnson represented to Lennar and the  
2 other landowners that he would provide water and wastewater treatment services to the  
3 property and surrounding area in about seven (7) months. (See Exhibit "E," 12 December  
4 2002 letter from Philip Polich ("Polich") to Johnson). Upon information and belief, at the  
5 time Johnson made this representation, he had no intention of providing water and  
6 wastewater treatment services to the subject property area within that time frame.

7  
8           24.    During the December 12, 2002 meeting, Johnson represented to Lennar and the  
9 other landowners that he would have the overall sewer and water engineering completed  
10 within three (3) months. (See Exhibit "E.") Upon information and belief, at the time  
11 Johnson made this representation to Lennar and the other landowners, he had no intention of  
12 completing the engineering within that time frame.

13           25.    At the December 12, 2002 meeting, Johnson represented to Lennar and the  
14 other landowners that he would have the 208 Permit secured within three (3) months of  
15 obtaining all Petition signatures for the formation of the district. (See Exhibit "E.") Upon  
16 information and belief, at the time Johnson made these representations to Lennar and the  
17 other landowners, he had no intention of securing the Permit within that time frame.

18  
19           26.    During the December 12, 2002 meeting with Lennar and the other landowners,  
20 Johnson promised to build the water and wastewater treatment plant with his own money at  
21 his own risk. Upon information and belief, at the time Johnson made this representation, he  
22 had no intention of building the water and wastewater treatment plant with his own money.

23           27.    During the December 12, 2002 meeting with Lennar and the other landowners,  
24 Johnson represented that he would do whatever it takes to secure Lennar and the other  
25



1 landowners' agreement to form the water improvement district. He represented that he  
2 would put up bonds as financial assurance to protect Lennar and the other landowners.

3 28. Johnson provided Lennar and the other landowners with a form petition to be  
4 filed with Pinal County requesting the establishment of a domestic water and wastewater  
5 improvement district. This petition provided that the "qualified electors of the proposed  
6 district" would make up the five-member Board of Directors.

7  
8 29. In reliance on the representations made by Johnson, Lennar requested that the  
9 seller of the property, HAM Maricopa, LLC, sign off on the petition requesting the  
10 establishment of a domestic water and wastewater improvement district. HAM Maricopa,  
11 LLC signed the petition on January 14, 2003.

12 30. Shortly thereafter, on February 3, 2003, Johnson advised Lennar and the other  
13 landowners that new petitions would need to be signed. The new form petition effectively  
14 removed Lennar and the other builders' ability to serve on the Board of Directors of the  
15 improvement district. The new petitions provided for the County Board of Supervisors to act  
16 as the 387 Districts' Board of Directors.

17  
18 31. In order to secure Lennar and the other landowners' signatures on the modified  
19 petition, Johnson made various assurances and representations to Lennar and the other  
20 landowners. For example, on or about February, 2003, Johnson again represented to Lennar  
21 and the other landowners that he would provide all offsite water and sewer infrastructure to  
22 the Properties. (See Exhibit "D," February 20, 2003 e-mail to Brian Tompsett from Mike  
23 Nuessle). Upon information and belief, at the time Johnson made this statement, he had no  
24 intention of providing such infrastructure.

25

1           32. On or about February, 2003, Johnson also represented to Lennar and the other  
2 landowners that he would obtain the APP permit within three to four (3 – 4) months. (See  
3 Exhibit “D.”) Upon information and belief, at the time Johnson made this statement to  
4 Lennar, he had no intention of obtaining the APP permit within that time frame.

5           33. Johnson represented to Lennar and the other landowners on or about February,  
6 2003, that he would provide all engineering applicable for water and sewer, except the 100-  
7 year assurances. (See Exhibit “D.”) Upon information and belief, at the time Johnson made  
8 this statement, he had no intention of performing or providing these engineering services.

9           34. On or about February, 2003, Johnson represented to Lennar and the other  
10 landowners that he would reimburse Lennar and the other landowners for all on-site  
11 improvements. (See Exhibit “D.”) Upon information and belief, at the time Johnson made  
12 this statement, he had no intention of paying for on-site improvements.

13           35. On or about February, 2003, Johnson represented to Lennar and the other  
14 landowners that the maximum time it would take for him to complete the water and  
15 wastewater treatment facilities and infrastructure was nine (9) months. (See Exhibit “D.”)  
16 Upon information and belief, at the time Johnson made this statement, he knew he would not  
17 be able to complete the necessary facilities within that time frame and had no intention of  
18 completing the necessary facilities within that time frame.

19           36. On or about February, 2003, Johnson represented to Lennar and the other  
20 landowners that he would expedite the engineering necessary for developers to pursue design  
21 for on-site engineering (well/tank locations). (See Exhibit “D.”) Upon information and  
22 belief, at the time Johnson made this statement, he knew he would not be able to complete  
23  
24  
25

1 the facilities within that time frame and had no intention of completing the necessary  
2 facilities within that time frame.

3 37. Johnson fraudulently omitted to disclose to Lennar and the other landowners  
4 that he had a partner. Johnson also fraudulently omitted to disclose to Lennar and the other  
5 landowners that his partner was a substantial landowner and/or controlled significant land  
6 holdings in the service area. In fact, at all relevant times, Johnson, through his affirmative  
7 conduct and statements, led Lennar and the other landowners to believe that he was the sole  
8 owner of Sonoran and that he alone was responsible for the provision of services and water  
9 to the properties.  
10

11 38. As a result of Johnson's representations and fraudulent omissions, Lennar  
12 requested that the Seller of the Property, HAM Maricopa, LLC, sign off on the modified  
13 Petitions to create the county improvement districts. HAM Maricopa, LLC signed the  
14 Petitions on or about 10 March 2003 (water district) and 13 March 2003 (wastewater  
15 improvement district). (See Exhibit "F.")  
16

17 **B. The Water And Wastewater Improvement Districts Are Formed And**  
**Sonoran Enters Contract To Be The Service Provider To The Districts**

18 39. On or about 21 May 2003, the Pinal County Board of Supervisors established  
19 the 387 Wastewater Improvement District and the 387 Water Improvement District  
20 (hereinafter collectively referred to as the "387 Districts") in order to secure provision of  
21 water and wastewater utility services to property located in what is now known as the City of  
22 Maricopa, Pinal County, Arizona.  
23

24 40. The creation of the 387 Districts essentially created a monopoly on behalf of  
25 the Districts for the provision of water and wastewater utilities to the subject property areas.

1 With the creation of the 387 Districts, the landowners in the subject area were prohibited  
2 from obtaining water and/or wastewater treatment services from any other provider.

3 41. The Pinal County Board of Supervisors serves as the Board of Directors for the  
4 387 Districts.

5 42. After the creation of the 387 Districts, the Board of Directors of the 387  
6 Districts (Pinal County Board of Supervisors) advertised in the Florence Reminder and the  
7 Blade Tribune on June 5, 2003 and June 12, 2003 for proposals from utility service providers  
8 to be the service provider for the 387 Districts. This Notice for proposals provided that any  
9 potential service provider must file its statements of interest by noon on June 23, 2003.  
10

11 43. Sonoran was the only utility provider to submit a Statement of Interest in  
12 response to the advertisement. Subsequently Sonoran was selected to be the utility provider  
13 for the 387 Districts.

14 44. Only two days after the deadline for filing Statements of Interest, on 25 June  
15 2003, the 387 Water Improvement District entered into a Water Supply and Management  
16 Services Agreement with Sonoran. (See Exhibit "A.")  
17

18 45. Under the Water Supply Agreement, Sonoran was required to provide water  
19 delivery services to all residential and commercial properties within the 387 Water  
20 Improvement District. The Water Supply Agreement specifically provided that Sonoran  
21 would "construct ... wells, pumps, storage, water treatment plant(s), transmission and  
22 distribution lines, valves, services and meters ... necessary to supply water within the  
23 District ...." (See Exhibit "A," p. 1).  
24  
25

1           46. Similarly, in order to secure wastewater treatment and collection services, the  
2 Pinal County Board of Supervisors, as the Board of Directors for the 387 Wastewater  
3 Improvement District ("Wastewater District"), entered into a Wastewater Treatment,  
4 Collection and Management Services Agreement with Defendant Sonoran on June 25, 2003.  
5 (See Exhibit "B" attached hereto.)  
6

7           47. Under the Wastewater Treatment Agreement, Sonoran was required to provide  
8 wastewater services to all property owners within the 387 Wastewater Improvement District.  
9 (See Exhibit "B," p. 1.)

10          48. The Wastewater Treatment Agreement provided that Sonoran would construct  
11 a "wastewater collection system consisting of all wastewater treatment plant(s), transmission  
12 and collection lines, lift stations, pumps, valves, connections, storage and disposal facilities  
13 ... necessary to collect, treat and dispose of all wastewater flows originating within the  
14 District ..."). (See Exhibit "B.")

15          49. Sonoran's Water Supply and Wastewater Treatment Agreements with the  
16 Districts were 30-year renewable management agreements. Under these agreements,  
17 Sonoran was to own, manage and operate certain water and wastewater utility facilities on  
18 behalf of the districts within Pinal County. (See Exhibits "A" and "B.")  
19

20          50. Lennar repeatedly requested to be a party to the contract negotiations between  
21 Sonoran and Pinal County Board of Supervisors because Lennar was a direct beneficiary of  
22 any contract entered into between the parties. Despite Lennar's repeated requests, Sonoran's  
23 contract with the County was negotiated without Lennar and the other district members'  
24  
25

1 concerns being addressed. In fact, neither Lennar nor the other district members were even  
2 permitted to see the agreement prior to its execution.

3 C. Due to Sonoran's Inaction, Lennar Seeks Alternative Utility Services and  
4 De-Annexation

5 51. Despite active negotiations, Lennar had been unable to negotiate a Master  
6 Utility Agreement with Johnson.

7 52. As of July, 2003, there had been no progress on the wastewater treatment  
8 facilities.

9 53. On or about July, 2003, Lennar sought alternative utility services and  
10 otherwise sought to de-annex from the 387 Districts as a result of Sonoran's lack of progress  
11 on the facilities, its failure to have a Master Utility Agreement negotiated and Lennar's  
12 exclusion from negotiations for the provider service agreement with the 387 Districts.

13 54. On or about July 15, 2003, Clare Abel, on behalf of Lennar, sent a letter to  
14 Pinal County Board of Supervisors advising that Lennar had filed petitions to de-annex from  
15 the 387 Districts.

16 55. On or about July 22, 2003, Lennar contacted Stan Griffis, the Pinal County  
17 Manager, requesting permission for Lennar to de-annex from the 387 Districts.

18 56. On July 23, 2003, Clare Abel, on behalf of Lennar, sent a letter to William  
19 McLean of the Pinal County Attorneys Office again advising of Lennar's request to de-  
20 annex from the 387 Districts.

21 57. The 387 Districts, Pinal County and Pinal County Board of Supervisors did not  
22 formally respond to the requests to de-annex. In fact, the only response received from the  
23 387 Districts and Pinal County Board of Supervisors was through Stan Griffis, the Pinal  
24  
25

1 County Manager, wherein he advised Lennar that Pinal County and the 387 Districts would  
2 not allow any de-annexation because Johnson advised the Pinal County and the 387 Districts  
3 that any de-annexation by Lennar would impair the financial viability of Sonoran.

4 58. As a result of Lennar's attempts to de-annex and seeking inclusion in a  
5 certificate of convenience and necessity filed with the Arizona Corporation Commission,  
6 Johnson subsequently sought to ensure Lennar's continued inclusion in the 387 Districts. In  
7 fact, on or about September, 2003, Johnson called Lennar and requested that Lennar stay in  
8 the District.  
9

10 59. In order to entice Lennar into remaining in the 387 Districts and dropping any  
11 attempt to garner utility services from another provider or otherwise de-annexing from the  
12 387 Districts, Johnson offered Lennar a personal guarantee wherein he would personally  
13 ensure that Sonoran perform under any Master Utility Agreement entered into between the  
14 parties.

15 60. Johnson also offered Lennar a nine hundred dollar (\$900) hook-up fee  
16 ("HUF") reduction per lot if Lennar would agree to stay in the 387 Districts and drop its  
17 pursuit of an alternative utility provider or any other pursuit to otherwise de-annex from the  
18 District. The terms of Johnson's promises are set forth in a Letter of Understanding attached  
19 as Exhibit "G."  
20

21 61. Upon information and belief, at the time he offered the \$900 reduction per lot,  
22 Johnson had no intention of providing Lennar with the HUF reduction.  
23  
24  
25

1           62. Lennar justifiably relied on Johnson's promises and withdrew its attempts to  
2 garner an alternative provision of utility services or otherwise de-annex from the 387  
3 Districts.

4           63. In order to memorialize Johnson's promise of a nine hundred dollar (\$900)  
5 HUF reduction per lot, Lennar and Johnson entered into a Consulting Agreement on or about  
6 October 27, 2003. This Consulting Agreement provided that Johnson, through his company,  
7 Boulevard Contracting Company, Inc., would pay Lennar nine hundred dollars (\$900) per lot  
8 it owned as a consulting fee providing Lennar performed consulting services on the water  
9 and wastewater treatment facilities as requested by Boulevard. (See Exhibit "M.")  
10

11           64. Johnson requested the Consulting Agreement because he did not want to put  
12 HUF reduction in the Master Utility Agreement. Johnson did not want other landowners  
13 requesting the same reduction.

14           **D. The Parties Enter Into a Master Utility Agreement**

15           65. On or about October 27, 2003, Lennar entered into a Master Utility Agreement  
16 for Water and Wastewater Facilities with Defendant Sonoran for provision of water and  
17 wastewater treatment services (hereinafter referred to as "Master Utility Agreement"). (A  
18 copy of the Agreement is attached hereto as Exhibit "C.")  
19

20           66. The Master Utility Agreement granted Sonoran the right to provide water and  
21 wastewater treatment services to the Property. (See Exhibit "C.")

22           67. The Master Utility Agreement provided for a construction schedule as follows:

23           The Company [Sonoran] will construct the Backbone Facilities  
24 as described on Attachment B in accordance with the  
25 Construction Schedule in Attachment D. In the event the  
Company does not meet the schedule set forth on Attachment D,



1 or if, in the opinion of Developer, the Company is not proceeding  
2 with due diligence to cause completion of the Backbone  
3 Facilities by the scheduled date, the Developer shall give the  
4 Company written notice of the delay and the Company shall have  
5 fifteen (15) days thereafter to provide a response and demonstrate  
6 that the Company is diligently trying to meet the in-service date.  
7 Failure by the Company to respond to any such alleged delays  
8 within the fifteen (15) day period shall entitle the Developer to  
9 provide Notice of Delay under the Performance and Payment  
10 Bond referred to below and to exercise its remedies under the  
11 performance bond required herein.

12 See Exhibit "C," pp. 3-4 (emphasis added).

13 68. The parties defined Backbone Facilities for the water facilities as three separate  
14 water plants. Each plant was to consist of a "500,000 gallon storage tank, pressure tank, well  
15 and associated equipment." (See Exhibit C and Exhibit B thereto.)

16 69. Backbone Facilities for the wastewater facilities included the construction of a  
17 1.0 MGD mechanical wastewater treatment plant with subsequent phases of the plant to be  
18 constructed at a later date in order to bring the maximum treatment capacity of the plants to  
19 6.6 MGD. (See Exhibit "B" and Exhibit "C" thereto).

20 70. The Master Utility Agreement entered into between Sonoran and Lennar  
21 provided that "the first phase of the wastewater treatment plant will be operational on or  
22 before May 15, 2004." See Exhibit "C," p. 4.

23 71. The Master Utility Agreement also called for the issuance of a Performance &  
24 Payment Bond:

25 Within fifteen (15) business days after execution of this  
Agreement, the Company [Sonoran] will obtain and pay for a  
Performance and Payment Bond in a form acceptable to the  
District, County and Developer, to ensure completion of the  
Backbone Facilities. The bond shall be in favor of the County,  
the District, and the Developer. The Company shall take no

1 action that would cause the bond to be rendered uncollectible in  
2 the event of a failure to perform by the Company. ...

3 See Exhibit "C," pp. 3-4.

4 72. In the Master Utility Agreement the parties acknowledged that Lennar:

5 [M]ust obtain certain zoning authorizations and approvals for the  
6 master plan on a community-wide basis; and ... [f]or the  
7 Developer [Lennar] to obtain (1) the required approvals for the  
8 Development, (2) commitments from prospective landowners or  
9 subdivisions within the Development, and (3) necessary  
10 financing for development of and improvements within the  
11 Development it is necessary for the Developer to have certain  
12 assurances regarding the provision of water and wastewater  
13 services and facilities within the entire Development at this time;  
14 and ....

15 (See Exhibit "C," pp. 2-3.)

16 73. In order to ensure that Lennar received the information and assistance it  
17 needed, the Master Utility Agreement provided that:

18 The Company [Sonoran] shall take all reasonable actions  
19 requested by the Developer [Lennar] to assist [Lennar] with final  
20 plat, ADEQ and Arizona Department of Real Estate approvals,  
21 and [Lennar] shall take all reasonable actions requested by  
22 [Sonoran] to assist [Sonoran] in obtaining all regulatory  
23 approvals necessary to serve the development.

24 See Exhibit "C," ¶ 17.

25 74. The Master Utility Agreement further provided that:

The Company shall be responsible for obtaining and maintaining  
all required permits for the WWTP including the Aqua Protection  
Permit (the "APP") and assures Developer that all sewage will be  
fully treated and the effluent from the WWTP shall be fully and  
properly disposed of in accordance with all pertinent county,  
state and federal regulations and requirements. The Company  
will use its best efforts to obtain the APP within four months of  
the execution of this Agreement [February 27, 2004].

See Exhibit "C," ¶ 7(A).

1           75. The parties also specifically defined events of default in Master Utility  
2 Agreement as follows:

- 3           a. Failure of Sonoran to provide water and sewer service in  
4 accordance with the mutually agreed time frame.
- 5           b. Failure of Sonoran to provide ADEQ approved quality of  
6 water to the Development.
- 7           c. Failure of Sonoran to provide adequate water pressure to  
8 maintain required fire protection service to the  
9 Development in addition to domestic service.
- 10           d. Failure of Sonoran to perform its obligation in a timely  
11 manner regarding the key dates as set forth in this  
12 Agreement.
- 13           e. Sonoran causes liens or judgments to be imposed upon the  
14 District's property or parcels within the Development.
- 15           f. Sonoran becomes insolvent, defined as it's filing of a  
16 petition in bankruptcy or the scheduling of trustees or  
17 UCC sales.
- 18           g. Failure of Sonoran to provide Developer with an industry  
19 standard Line Extension Agreements for the various  
20 Development parcels.

21 (See Exhibit "C," p. 8.)

22           76. Sonoran also made certain assurances to Lennar. Specifically, Sonoran assured  
23 Lennar that it:

24 [C]urrently has or will have at the time each phase or subdivision  
25 connection to the Company's system, adequate water production,  
treatment as required, and storage facilities to provide adequate  
water service and a Wastewater Treatment Plant ("WWTP") and  
collector mains adequately sized to receive and treat all  
wastewater from that phase or subdivision in accordance with all  
applicable Arizona Department of Environmental Quality  
("ADEQ") and Pinal County requirements. These facilities  
hereinafter referred to as the Backbone Facilities, are described  
on Attachment B hereto.

1 See Exhibit "C," p. 2.

2 77. Defendant George H. Johnson is the manager of Sonoran. On or about 10  
3 October 2003 Johnson tendered his personal promise that Sonoran would perform under the  
4 Master Utility Agreement, which provided as follows:

5 George H. Johnson ("Johnson") hereby unconditionally  
6 guarantees to Lennar Communities Development, Inc.  
7 ("Lennar") the completion of the construction of the Water and  
8 Wastewater Facilities described in Attachment A hereto on or  
9 before the May 15, 2004 Performance Date in the Agreement, (as  
10 that date may be amended by the Parties to the Agreement),  
11 which Facilities are the subject of the Master Utility Agreement  
12 between Sonoran Utility Services, LLC ... and Lennar ... and  
13 which are required for utility service to Phase I of the  
14 Development as defined in the Agreement. In the event Sonoran  
15 fails to perform as contemplated under the Agreement, Johnson  
16 personally guarantees said performance.

17 See Exhibit "I" attached hereto.

18 78. On January 15, 2004 Lennar granted Sonoran and Johnson a 90-day extension  
19 to complete Phase I construction. Under the extension agreement, Sonoran was required to  
20 complete construction and have Phase I operational by August 15, 2004. See Exhibit "J,"  
21 January 15, 2004 letter from Alan Jones to George Johnson.

22 E. LONG AFTER INDUCING LENNAR AND THE OTHER  
23 LANDOWNERS TO FORM THE 387 DISTRICT AND ENGAGE  
24 SONORAN AND/OR JOHNSON AS UTILITY PROVIDER, JOHNSON  
25 FINALLY INFORMS LENNAR AND THE OTHER LANDOWNERS  
THAT HE HAS A PARTNER WHO CONTROLS SIGNIFICANT  
LANDHOLDINGS IN THE SERVICE AREA

79. At all relevant times, Johnson held himself out as the only owner of Sonoran.  
At no time prior to March 2004 did Johnson advise Lennar of the fact that he had a partner

1 who was also a substantial landowner and/or controlled substantial landholdings in the 387  
2 Districts.

3 80. It was not until on or about March of 2004 that Johnson introduced his partner,  
4 Connelly Wolfswinkel ("Wolfswinkel") to Lennar and the other landowners in the 387  
5 Districts. At this time, Johnson introduced Mr. Wolfswinkel to Lennar and the other  
6 landowners as his "partner." At no time prior to this "introduction" had Johnson or  
7 Wolfswinkel advised Lennar of Wolfswinkel's interest in the water and wastewater  
8 treatment contracts.  
9

10 81. On or about the meeting of March 3, 2004, both Johnson and Wolfswinkel  
11 represented to Lennar and the other landowners that Wolfswinkel was always a partner in  
12 Sonoran and always had an interest in the water and wastewater facilities and the utility  
13 agreements with the 387 Districts and the landowners.

14 82. Upon information and belief, at all relevant times, Wolfswinkel was a  
15 significant landowner or otherwise controlled significant landholdings within the 387  
16 Districts.  
17

18 83. Had Lennar known that Connelly Wolfswinkel, a fellow property owner within  
19 the District, was a partner in Sonoran and/or the water and wastewater contracts, Lennar  
20 never would have agreed to petition into the 387 Districts, enter into a Master Utility  
21 Agreement or otherwise become involved with Sonoran and/or Johnson.

22 **F. SONORAN FAILS TO TIMELY COMPLETE CONSTRUCTION, POST**  
23 **BOND, AND COOPERATE WITH LENNAR**

24 84. Despite the specific requirements of the Master Utility Agreement, Sonoran  
25 failed to post any bond or financial assurance that could be utilized as set forth in the Master

1 Utility Agreement. As of this date, neither Sonoran nor Johnson have posted a performance  
2 bond as required by the Master Utility Agreement.

3 85. Despite the specific provisions of the parties' agreement, Defendants Sonoran  
4 and Johnson failed to obtain the APP by February 27, 2004. In fact, as of November 15,  
5 2004, Sonoran and/or Johnson still had not obtained the APP.

6 86. Johnson and/or Sonoran failed to meet the construction schedule as set forth in  
7 the party's agreement. (See Exhibit L).

8 87. On or about March 15, 2004, Lennar gave Defendants Johnson and Sonoran a  
9 Notice of Default regarding Sonoran's failure to begin construction on the facility, failure to  
10 timely post bond and failure to obtain the acquifer protection permit within four months.  
11 (See Exhibit "L").

12 88. The Notice of Default sent to Johnson and Sonoran was simultaneously  
13 provided to Jimmy Kerr of the Pinal County Board of Supervisors as well as William  
14 McLean of the Pinal County Attorney's Office.

15 89. Defendants Sonoran and Johnson were also advised that there was a lack of  
16 significant progress in the construction of the Backbone Facilities causing serious doubts as  
17 to whether or not the extended contractual deadline of August 15, 2004 would be met.  
18 Lennar also advised Defendants Sonoran and Johnson that their numerous defaults had  
19 already caused the cancellation of a \$3.96 million escrow. *Id.*

20 90. Johnson and/or Sonoran failed to cure the defaults under the Master Utility  
21 Agreement.

1           **G.   DESPITE SONORAN AND JOHNSON'S DEFAULTS, DEFENDANTS**  
2           **387 DISTRICTS AND, PINAL COUNTY BOARD OF SUPERVISORS**  
3           **DO NOTHING TO ENFORCE THE MANAGEMENT SERVICE**  
4           **AGREEMENTS.**

5           91.   On or about March 25, 2004, the Pinal County Board of Supervisors; the Pinal  
6           County Manager, Stan Griffis; and the Pinal County Attorney, Richard Husk, were notified  
7           about the various defaults by Defendants Johnson and Sonoran. (See Letter from Clare Abel  
8           ("Abel Letter") dated March 25, 2004, attached as Exhibit H).

9           92.   The Abel Letter further advised the 387 Districts and Pinal County Board of  
10          Supervisors that Defendants Johnson and Sonoran, despite notice of default being given,  
11          failed to cure the numerous defaults.

12          93.   On or about March 25, 2004, Defendants the 387 Districts, and the Pinal  
13          County Board of Supervisors were also notified that Defendants Sonoran and Johnson were  
14          in default on their Management Services Agreements with the 387 Districts. (See Abel  
15          Letter, Exhibit H). Defendants the 387 Districts and Pinal County Board of Supervisors  
16          were advised that these defaults were "serious and threaten Lennar's current investments and  
17          expenditures in Pinal" County. *Id.*

18          94.   On or about March 25, 2004, Lennar insisted that the 387 Districts, and Pinal  
19          County Board of Supervisors take immediate action to rectify the defaults by Defendants  
20          Sonoran and Johnson. (See Exhibit H).

21          95.   On or about March 25, 2004, the 387 Districts, Pinal County and Pinal County  
22          Board of Supervisors were advised of the financial ramifications suffered by Lennar, a third  
23          party beneficiary of the 387 Districts agreements with Defendants Sonoran and Johnson, as a  
24          result of Sonoran and Johnson's defaults. (See Exhibit H).  
25

1           96. On or about March 25, 2004, Lennar told the 387 Districts, and Pinal County  
2 Board of Supervisors that the Management Services Agreements were transferred to an  
3 individual who owned or otherwise controlled significant landholdings in the 387 Districts,  
4 thereby creating a conflict. (See Exhibit H).

5           97. On or about March 25, 2004, Lennar demanded that the 387 Districts and/or its  
6 Board of Directors, the Pinal County Board of Supervisors, "take immediate action to  
7 remove Sonoran as the manager/operator of the Districts and replace Sonoran with a  
8 competent, qualified, adequately funded operator who does not have an interest in any  
9 properly located within the District" and "take steps immediately to remedy these defaults."  
10 (See Exhibit H).

11           98. The 387 Districts and Pinal County Board of Supervisors did nothing to ensure  
12 that Sonoran and Johnson cured their defaults nor did it take any action in response to  
13 Lennar's request to remove Sonoran as the manager/operator of the Districts.

14           99. Once again, on March 30, 2004, Lennar again notified Defendants the 387  
15 Districts, and the Pinal County Board of Supervisors of the continued defaults by Defendants  
16 Johnson and Sonoran. (See Exhibit N, March 30, 2004 letter from Clare Abel).

17           100. On or about March 30, 2004, Lennar demanded that the 387 Districts and the  
18 Pinal County Board of Supervisors terminate the Management Services Agreements with  
19 Defendants Johnson and Sonoran as a result of Johnson and Sonoran's defaults under the  
20 Management Services Agreements and the Master Utility Agreement. (See Exhibit N).



1           101. Defendants the 387 Districts, and the Pinal County Board of Supervisors failed  
2 to act on Lennar's request and further failed to control the situation and ensure that the  
3 defaults were cured.

4           H. DEFENDANTS JOHNSON AND SONORAN'S DEFAULTS CONTINUE  
5 AND THE 387 DISTRICTS, AND PINAL COUNTY BOARD OF  
6 SUPERVISORS FAILED TO ADDRESS AND REMEDY THESE  
7 DEFAULTS AND DID ABSOLUTELY NOTHING TO ENSURE THAT  
8 JOHNSON AND SONORAN COMPLY WITH BOTH THE MASTER  
9 UTILITY AGREEMENT ENTERED INTO WITH ITS CONSTITUENT  
10 LENNAR AS WELL AS THE MANAGEMENT SERVICES  
11 AGREEMENTS ENTERED INTO WITH THE 387 DISTRICTS AND  
12 PINAL COUNTY BOARD OF SUPERVISORS

13           102. Despite the specific provisions in the Master Utility Agreement, Johnson  
14 and/or Sonoran refused to cooperate with Lennar in timely signing the forms for Lennar to  
15 obtain the necessary governmental approvals from the ADEQ, and the forms needed to  
16 obtain the 100-year Certificate of Assured Water.

17           103. Additionally, Defendants Johnson and Sonoran refused to provide the  
18 necessary information required by the regulatory agencies in order for Lennar to achieve  
19 final approval of the water certificate. Because of the withholding of information, Lennar's  
20 plats were not timely approved.

21           104. Defendant Sonoran and/or Johnson failed to complete construction of Phase I  
22 of the water and wastewater facilities by August 15, 2004.

23           105. On or about September 15, 2004, Lennar served the 387 Districts and Pinal  
24 County Board of Supervisors with a Notice of Claim. (See Exhibit K).

25           106. Defendants the 387 Districts, and the Pinal County Board of Supervisors failed  
to respond to Lennar's Notice of Claim. In fact, these Defendants did absolutely nothing.

**I. DEFENDANT JOHNSON DEFAULTS UNDER HIS CONSULTING AGREEMENT WITH LENNAR.**

107. As stated above, Johnson, through his company named Boulevard Contracting Company, Inc. entered into a Consulting Agreement with Lennar on or about October 27, 2003.

108. As alleged herein, the Consulting Agreement provided that Boulevard Contracting, Inc. would pay Lennar a consulting fee of nine hundred (\$900) per lot served by Sonoran's water and wastewater treatment facilities.

109. In approximately January, 2004, Johnson advised Lennar that neither he nor Boulevard would abide by the Consulting Agreement entered into between the parties. Johnson unequivocally manifested his and Boulevard's intent not to perform as required by the Consulting Agreement.

## **CLAIMS FOR RELIEF**

## COUNT I

**(Breach of Contract Against Defendants Sonoran and Johnson)**

110. Plaintiff incorporates all of the foregoing paragraphs as if set forth fully herein.

111. As alleged herein, Defendants Sonoran and Johnson entered into a Master Utility Agreement and personal guarantee with Lennar.

112. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master Utility Agreement and personal guarantee of Johnson, were required to post a Performance and Payment Bond within fifteen business days from the execution of the Agreement, on October 27, 2003.

1           113. As of this date, Defendants Sonoran and Johnson have failed to post the  
2 required bond.

3           114. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master  
4 Utility Agreement and personal guarantee of Johnson, were to complete the Phase I  
5 improvements on or before August 15, 2004.

6           115. Defendants Johnson and Sonoran failed to complete the improvements or  
7 otherwise complete the facilities by August 15, 2004.

8           116. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master  
9 Utility Agreement and personal guarantee of Johnson, had a duty to provide information and  
10 assistance to Lennar in order for Lennar to obtain necessary approvals.

11           117. As alleged herein, Defendants Sonoran and Johnson failed to assist Lennar in  
12 providing either information or other assistance to obtain the necessary regulatory approvals.  
13 In fact, as alleged herein, Defendants failed to provide information and approvals to Lennar  
14 and held them "ransom" so that Lennar would remove its objections to the District.

15           118. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master  
16 Utility Agreement and personal guarantee of Johnson, were required to obtain the APP on or  
17 before February 27, 2004.

18           119. As alleged herein, Defendants Sonoran and Johnson did not obtain the  
19 necessary APP, which is required in order to actually operate the facilities, by February 27,  
20 2004. In fact, as of November 1, 2004, Defendants Sonoran and Johnson still had not  
21 obtained the necessary APP.  
22  
23  
24  
25

120. As alleged herein, Defendants Sonoran and Johnson breached the Master Utility Agreement with Lennar.

121. As alleged herein, Defendant Johnson breached the personal guarantee entered into with Lennar.

122. As a direct and proximate result of these substantial breaches by Defendants, Lennar has incurred damages in an amount to be proven at trial.

**COUNT II**  
**(Breach of Covenant of Good Faith and Fair Dealing Against Defendants Sonoran and Johnson)**

123. Plaintiff incorporates the allegations contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

124. Implied in the Master Utility Agreement is a covenant of good faith and fair dealing whereby each of the parties was bound to refrain from any action that would impair the benefits the other party had the right to expect from the Agreement.

125. As alleged herein, Defendants Sonoran and Johnson breached the duty of good faith and fair dealing.

126. As a direct and proximate result of Defendants' breaches of the implied covenant of good faith and fair dealing, Lennar has incurred damages in an amount to be proven at trial.

**COUNT III**  
**(Breach of Personal Guarantee Against Defendant Johnson)**

127. Plaintiff incorporates the allegations contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

1           128. As alleged herein, Defendant Johnson entered into a personal guarantee with  
2 Lennar wherein Johnson personally guaranteed Sonoran's performance of the Master Utility  
3 Agreement.

4           129. As alleged herein, Sonoran and/or Johnson have failed to perform under the  
5 Master Utility Agreement.

6           130. As a direct and proximate result, Lennar has incurred damages in an amount to  
7 be proven at trial.

8  
9                                   **COUNT IV**  
10                               **(Negligent Misrepresentation Against Defendant Johnson)**

11           131. Plaintiff incorporates each of the allegations of this Complaint as if fully set  
12 forth herein.

13           132. As alleged herein, Defendant Johnson made false material misrepresentations  
14 and omissions to Lennar in order to induce Lennar into petitioning into the 387 Improvement  
15 Districts, and entering into a Master Utility Agreement with Sonoran.

16           133. As alleged herein, Defendant Johnson made false material misrepresentations  
17 and omissions to Lennar in order to induce Lennar to drop its attempts to de-annex or  
18 otherwise remove itself from the 387 Districts.

19           134. As alleged herein, Defendant Johnson made false material misrepresentations  
20 and omissions to Lennar in order to induce Lennar into entering into a Consulting Agreement  
21 with Boulevard.

22           135. As alleged herein, Johnson made these material misleading misrepresentations  
23 and omissions expecting and realizing that Lennar would rely upon them and for the  
24 purposes of inducing Lennar to rely upon them.  
25

136. As alleged herein, Johnson owed a duty to Lennar to disclose material facts and provide and communicate the information to Lennar that he omitted. As alleged herein, Johnson failed to exercise reasonable care and competence in providing and communicating material facts to Lennar and withheld material facts from Lennar.

137. As alleged herein, each of the misrepresentations and omissions made by Johnson was false, material, and misleading. Johnson owed a duty to Lennar and failed to exercise reasonable care and competence in making these statements to Lennar.

138. As alleged herein, Lennar justifiably relied upon Johnson's material misrepresentations and omissions.

139. As alleged herein, Lennar was unaware of the falsity of Johnson's careless and negligent false and misleading material misrepresentation and/or omissions.

140. As a direct and proximate result of these false and misleading material misrepresentations and/or omissions, Lennar has sustained damages in an amount to be proven at trial.

**COUNT V**  
**(Fraud Against Defendant Johnson)**

**141. Plaintiff incorporates all of the foregoing paragraphs as if set forth fully herein.**

142. As alleged herein, Defendant Johnson fraudulently omitted to advise Lennar that he had a “partner” involved with the provision of water and wastewater services to the 387 Districts.

143. As alleged herein, Johnson made a false material representation to Lennar that neither he nor his company were property owners or otherwise controlled significant landholdings in the service area and that he was only a utility provider.

1           144. As alleged herein, Johnson fraudulently omitted to tell Lennar that his  
2 "partner" in the provision of water and wastewater services to the 387 Districts was a major  
3 property owner or otherwise controlled significant landholdings in the 387 Districts.

4           145. As alleged herein, Johnson made additional false material misrepresentations  
5 and fraudulently omitted to disclose information to Lennar in order to induce Lennar into  
6 petitioning into the 387 Improvement Districts.

7           146. As alleged herein, Defendant Johnson made false material misrepresentations  
8 and omissions to Lennar in order to induce Lennar to drop its attempts to de-annex or  
9 otherwise remove itself from the 387 Districts.

10           147. As alleged herein, Defendant Johnson made false material misrepresentations  
11 and omissions to Lennar in order to induce Lennar into entering into a Consulting Agreement  
12 with Boulevard.

13           148. As alleged herein, Johnson made these material misrepresentations and  
14 omissions expecting and realizing that Lennar would rely upon them and for purposes of  
15 inducing Lennar to rely upon them.

16           149. As alleged herein, Johnson knew that the statements and omissions he was  
17 making to Lennar were false or misleading, and that the omissions made the other statements  
18 he did make false or misleading.

19           150. As alleged herein, Johnson intended that Lennar would act upon his statements  
20 and fraudulent omissions in agreeing to petition into the 387 Districts and enter a Master  
21 Utility Agreement with Sonoran.

1           151. As alleged herein, Johnson intended that Lennar would act upon his statements  
2 and fraudulent omissions in dropping its attempts to de-annex or otherwise remove itself  
3 from the 387 Districts.

4           152. As alleged herein, Defendant Johnson intended that Lennar would act upon his  
5 statements and fraudulent omissions in agreeing to enter into the Consulting Agreement with  
6 Boulevard.

7           153. As alleged herein, Lennar did not know that Johnson was fraudulently omitting  
8 relevant information of his partnership.  
9

10          154. Lennar was justifiably unaware that Johnson had a partner that was a major  
11 property owner or otherwise controlled significant landholdings in the 387 Districts.

12          155. Lennar was justifiably unaware that Johnson was making material  
13 misrepresentations and omissions to Lennar in order to induce Lennar into petitioning into  
14 the 387 Improvement Districts, dropping its attempts to de-annex or otherwise remove itself  
15 from the 387 Districts and enter into the Consulting Agreement with Boulevard.

16          156. As alleged herein, Lennar relied on the truthfulness of the statements  
17 Defendant Johnson was giving in petitioning into the 387 Districts, entering into the Master  
18 Utility Agreement, dropping its attempts to de-annex from the 387 Districts, and entering  
19 into the Consulting Agreement with Boulevard.  
20

21          157. As alleged herein, Lennar had a right to rely on Johnson's statements and  
22 fraudulent omissions.  
23  
24  
25



158. As a direct and proximate result of Johnson's false and misleading misrepresentations and omissions, Lennar has sustained damages in an amount to be proven at trial.

**COUNT VI**  
**(Anticipatory Breach of Contract Against Defendant Boulevard)**

159. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

160. As alleged herein, Defendant Boulevard entered into a Consulting Agreement with Lennar on or about October 27, 2003.

161. As alleged herein, Defendant Boulevard unequivocally manifested its intent not to perform under the terms of the Consulting Agreement.

162. As alleged herein, as a direct and proximate result of Defendant's breach of the consulting agreement, Lennar has sustained damages in an amount to be proven at trial.

**COUNT VII**  
**(Breach of Fiduciary Duty Against Defendants Pinal County Board of Supervisors  
and the 387 Districts)**

163. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

164. The 387 Districts and the Pinal County Board of Supervisors, as the board of directors of the 387 Districts, owed fiduciary duties to Lennar and to other landowners in the districts to manage the districts for the benefit of Lennar and other landowners, and to accomplish the purposes for which the districts were created.

165. The 387 Districts and the Pinal County Board of Supervisors, through neglect, malfeasance, misfeasance, or otherwise, breached their fiduciary duties of care and loyalty to

1 Lennar and to the other landowners in the districts, by failing to comply or to require  
2 compliance with laws and contracts intended for the benefit and protection of Lennar and  
3 other landowners, and by otherwise failing to manage the districts for the benefit of Lennar  
4 and other landowners, and to accomplish the purposes for which the districts were created.

5 166. As a direct and proximate result of the 387 Districts' and the Pinal County  
6 Board of Supervisors' breaches of fiduciary duties, the Plaintiff has been damaged in an  
7 amount to be proved at trial.  
8

9 **COUNT VIII**  
10 **(Breach of Statutory Duties Against Defendants Pinal County Board of Supervisors**  
11 **and the 387 Districts)**

12 167. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set  
13 forth fully herein.

14 168. The 387 Districts and the Pinal County Board of Supervisors, as the board of  
15 directors of the 387 Districts, were required by law, including without limitation Arizona  
16 Revised Statutes § 48-909, and therefore owed duties to the Lennar and to other landowners  
17 in the 387 Districts, to operate and manage the 387 Districts for the purposes for which the  
18 387 Districts were created, and according to the provisions of law pursuant to which the 387  
19 Districts were created.

20 169. The 387 Districts and the Pinal County Board of Supervisors, as the board of  
21 directors of the 387 Districts, were required by law, including without limitation Arizona  
22 Revised Statutes § 48-925, and therefore owed duties to Lennar and to other landowners in  
23 the 387 Districts, to require that Sonoran file such bond or bonds as were required by law  
24 and as required in Lennar's agreements with Sonoran.  
25

1 170. The 387 Districts and the Pinal County Board of Supervisors, through neglect,  
2 malfeasance, misfeasance, or otherwise, breached their statutory and other duties to Lennar  
3 and to the other landowners in the districts, by failing to comply or to require compliance  
4 with laws intended for the benefit and protection of Lennar and other landowners, including  
5 the laws requiring that Sonoran file such bond or bonds as were required by law and by  
6 Lennar's agreements with Sonoran, and by otherwise failing to manage the 387 Districts  
7 according to law and to accomplish the purposes for which the 387 Districts were created.  
8

9 171. As a direct and proximate result of the 387 Districts' and the Pinal County  
10 Board of Supervisors' breaches of statutory and other duties, Lennar has been damaged in an  
11 amount to be proved at trial.

12 172. As a direct and proximate result of the 387 Districts' and the Pinal County  
13 Board of Supervisors' breaches of statutory and other duties, the 387 districts have not been  
14 operated in compliance with the law, and continue to operate in violation of the law.  
15

16 **COUNT IX**  
17 **(Third Party Beneficiary Claim for Breach of Contracts Between Sonoran and the 387**  
18 **Districts, Against Sonoran)**

19 173. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set  
20 forth fully herein.

21 174. The contracts between Sonoran and the 387 Districts to provide water and  
22 wastewater service within the boundaries of the districts were made for the express purpose  
23 of providing such services to Lennar and to the other landowners in the districts, and were  
24 intended to benefit Lennar and the other landowners in the districts in the ownership, use,  
25 and enjoyment of their property within the districts.

1 175. Sonoran has materially breached its contracts with the 387 Districts as alleged  
2 in this Complaint.

3 176. As a direct and proximate result of Sonoran's breaches of the contracts with  
4 the 387 Districts, as alleged in this Complaint, Lennar has been damaged in an amount to be  
5 proved at trial.

6  
7 **COUNT X**  
8 **(Third Party Beneficiary Claim for Breach of Covenant of Good Faith and Fair  
Dealing in Contracts Between Sonoran and the 387 Districts, Against Sonoran)**

9 177. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set  
10 forth fully herein.

11 178. The contracts between Sonoran and the 387 Districts included an implied  
12 covenant of good faith and fair dealing, by which Sonoran promised to conduct itself with  
13 respect to the subject matter of the contracts, so that the 387 Districts and the landowners in  
14 the districts, including Lennar, would not be denied the benefits reasonably expected to be  
15 provided by Sonoran pursuant to the contracts.

16 179. Sonoran has breached the covenant of good faith and fair dealing in the  
17 contracts with the 387 Districts, and has so conducted itself with respect to the subject matter  
18 of the contracts and its promises that the 387 Districts, Lennar, and other landowners in the  
19 districts have been denied the benefits promised and reasonably expected to be provided by  
20 Sonoran pursuant to the contracts.

21 180. As a direct and proximate result of Sonoran's breaches of the covenant of good  
22 faith and fair dealing in the contracts with the 387 Districts, as alleged in this Complaint,  
23 Lennar has been damaged in an amount to be proved at trial.  
24  
25

**COUNT XI**  
**(Declaratory Relief Against Sonoran, the 387 Districts, and the Pinal County Board of Supervisors)**

181. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

182. The Plaintiff has a direct and substantial interest in the lawful operation and management of the 387 Districts and in the timely and lawful performance of the contracts alleged in this Complaint.

183. As a result of the Defendants' failure to comply with the law, breaches of contracts, and other breaches of duty, as alleged in this Complaint, the Plaintiff's interests have been damaged and are still threatened by the Defendants' failure and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

184. There exists an actual and justiciable controversy between the Plaintiff and the Defendants with respect to the lawful operation and management of the 387 Districts, with respect to the timely and lawful performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

185. The Plaintiff is entitled to a judgment declaring the rights and obligations of the parties with respect to the lawful operation and management of the 387 Districts, with respect to the performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

1        186. Plaintiff is also entitled to supplemental relief, including such additional orders  
2 as may be required to give effect to the Court's declarations with respect to the rights and  
3 obligations of the parties with respect to the lawful operation and management of the 387  
4 Districts, with respect to the performance of the contracts alleged in this Complaint, and with  
5 respect to the Defendants' repeated and continuing breaches of contract and refusal to  
6 comply with their contractual, fiduciary, statutory, and other obligations  
7

8                                    **COUNT XII**  
9                                    **(Punitive Damages)**

10        187. Plaintiff incorporates all of the foregoing allegations in this Complaint as is set  
11 forth fully herein.

12        188. Defendants, and each of them, consciously pursued a course of conduct  
13 knowing it created a substantial risk of harm to Lennar.

14        189. Defendants acted intentionally, willfully, with an evil mind, and with a callous  
15 disregard towards Lennar.

16        190. Defendants, and each of them, act with oppression, fraud and malice, and  
17 conscious disregard of Lennar's rights under applicable law.

18        191. Lennar is entitled to punitive damages in an amount to be determined at trial  
19 sufficient to punish or set an example of Defendants, and each of them.

20        WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- 21        A.     For damages in an amount to be proved at trial;  
22        B.     For punitive damages in an amount to be proven at trial;  
23        C.     For such orders as may be required to declare and give effect to the rights and  
24 obligations of the parties with respect to the lawful operation and management  
25

1 186. Plaintiff is also entitled to supplemental relief, including such additional orders  
2 as may be required to give effect to the Court's declarations with respect to the rights and  
3 obligations of the parties with respect to the lawful operation and management of the 387  
4 Districts, with respect to the performance of the contracts alleged in this Complaint, and with  
5 respect to the Defendants' repeated and continuing breaches of contract and refusal to  
6 comply with their contractual, fiduciary, statutory, and other obligations  
7

8 **COUNT XII**  
9 **(Punitive Damages)**

10 187. Plaintiff incorporates all of the foregoing allegations in this Complaint as is set  
11 forth fully herein.

12 188. Defendants, and each of them, consciously pursued a course of conduct  
13 knowing it created a substantial risk of harm to Lennar.

14 189. Defendants acted intentionally, willfully, with an evil mind, and with a callous  
15 disregard towards Lennar.

16 190. Defendants, and each of them, act with oppression, fraud and malice, and  
17 conscious disregard of Lennar's rights under applicable law.

18 191. Lennar is entitled to punitive damages in an amount to be determined at trial  
19 sufficient to punish or set an example of Defendants, and each of them.

20 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- 21 A. For damages in an amount to be proved at trial;  
22 B. For punitive damages in an amount to be proven at trial;  
23 C. For such orders as may be required to declare and give effect to the rights and  
24 obligations of the parties with respect to the lawful operation and management  
25

1 of the 387 Districts, with respect to the performance of the contracts alleged in  
2 this Complaint, and with respect to the Defendants' repeated and continuing  
3 breaches of contract and refusal to comply with their contractual, fiduciary,  
4 statutory, and other obligations;

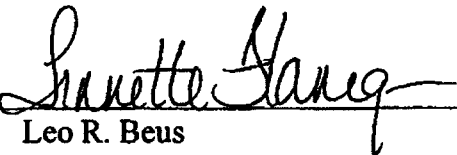
5 D. For Plaintiff's reasonable attorney's fees and costs;

6 E. For pre-judgment and post-judgment interest as allowed pursuant to statute and  
7 common law; and  
8

9 F. For such other and further relief as this Court deems just and proper under the  
10 circumstances.

11 DATED this \_\_\_\_ day of March, 2005.

12 BEUS GILBERT PLLC

13  
14 By 

15 Leo R. Beus  
16 Britton M. Worthen  
17 Linnette R. Flanigan  
18 4800 North Scottsdale Road  
19 Suite 6000  
20 Scottsdale, AZ 85251  
21 Attorneys for Plaintiff  
22  
23  
24  
25



ATTACHMENT

"B"

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-002548

12/05/2005

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 12/09/2005

LENNAR COMMUNITIES DEVELOPMENT  
INC

LEO R BEUS

v.

SONORAN UTILITY SERVICES L L C, et al.

THOMAS K IRVINE

LAT J CELMINS  
JAMES M JELLISON  
DOCKET-CIVIL-CCC  
FILE ROOM-CSC  
PINAL COUNTY CLERK  
RECORDS-CHANGE OF VENUE-CSC

MINUTE ENTRY

Defendants Pinal County and 387 District Defendants' Motion for Change of Venue has been under advisement. Having considered all memoranda submitted and the arguments of counsel, the Court finds and orders as follows.

Defendants seek a change of venue based on the mandatory language of A.R.S. §12-401(15) and (16), urging that the Pinal County Board of Supervisors is a governmental entity and that the individual defendants named are public officials. Plaintiff argues that these defendants are not statutorily authorized governmental entities or public officers. Even if they are so construed, plaintiff urges that allowing a change of venue will deprive plaintiff of its right to a change of venue under A.R.S. §12-408(A).

The Court finds that the Pinal County Board of Supervisors falls within the meaning of the term "county" in A.R.S. §12-401(15) and the individual Supervisors are public officers within the meaning of A.R.S. §12-401(16). The Court further finds that change of venue is mandatory under this statute.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-002548

12/05/2005

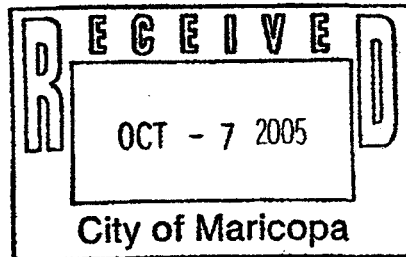
The Court is not persuaded that plaintiff's inability to obtain another change of venue under A.R.S. §12-408(A) is a sufficient legal reason to deny the moving defendants their entitlement to be sued in Pinal County.

IT IS ORDERED granting defendants' Motion for Change of Venue and venue is hereby transferred to Pinal County for all further proceedings.

IT IS FURTHER ORDERED that the Clerk of the Superior Court of Maricopa County transfer the file and all other documents to the Clerk of the Court, Pinal County, upon defendants paying the required transmittal fee within the time limits and in the amount provided in ARS §12-407, as amended.

# ATTACHMENT

"C"



October 7, 2005

Stanley D. Griffis, Ph.D.  
Clerk of the Boards of Supervisors and of the  
Boards of Directors of the 387 Districts  
P.O. Box 827  
Florence, Arizona 8523

City Clerk  
City of Maricopa  
Maricopa, Arizona

1419 North Third Street  
Suite 100  
Phoenix, Arizona 85004

Telephone (602) 230-8080  
Facsimile (602) 230-0105

Irvine@IrvLawFirm.com

Re: **Notice of Claim**

Dear Clerks:

This letter is a notice of claim pursuant to A.R.S. § 12-821.01 against Pinal County ("County"), the Pinal County 387 Water and Wastewater Improvement Districts (the "Districts"), David Snider ("Snider"), the City of Maricopa ("Maricopa") and Rick Buss ("Buss") by Sonoran Utility Service, L.L.C. ("Sonoran").

### **History**

In 2002, the County was facing tremendous growth in the Maricopa area that required water and sewer services. The County determined that the proper way to provide such utility services was to use its authority pursuant to Title 11, A.R.S., to establish the Districts.

The Districts were established pursuant to A.R.S. § 48-901 *et seq.* in order to provide water and wastewater service to lands within the Districts. The 387 Water Improvement District is a domestic water improvement district ("DWID") within the meaning of A.R.S. § 48-1011. The 387 Wastewater Improvement District is, at present, an "ordinary" county improvement district that could, however, be converted to a domestic wastewater improvement district ("DWWID") as defined in A.R.S. § 48-1011 at the option of the district's board of directors pursuant to A.R.S. § 48-1018.

Arizona law confers authority on the board of directors of a DWID and/or DWWID to set fees for the district. A.R.S. § 48-910. After a public procurement, in June, 2003, the Districts entered into contracts with Sonoran under which Sonoran would construct, operate and manage water and wastewater facilities for the Districts. See Water Supply and Management Services Agreement dated June 25, 2003, and Wastewater Treatment, Collection, and Management

Services Agreement dated June 25, 2003 (the "Management Agreements"). These Management Agreements provide that Sonoran would fund construction, operation and maintenance of all the necessary facilities to provide water and wastewater service to the Districts, and that Sonoran would hold title to the facilities. The Management Agreements further provide that the boards of directors of the Districts would establish fees, rates and charges for water and wastewater services, and that Sonoran would recoup its capital costs and a return on its investment via these fees. The term of the Management Agreements is at least thirty years, so that Sonoran had an adequate period to recover on its investment. Sonoran expended millions of dollars in carrying out its obligations to construct and permit facilities in the Districts, and to provide service to customers.

The Management Agreements set out all needed terms and conditions that govern the relationship between Sonoran and the Districts.

The Districts, having been duly established as "bod[ies] corporate with the powers of a municipal corporation," A.R.S. § 48-906, will continue to exist until they are dissolved pursuant to A.R.S. § 48-959. Dissolution is authorized when (1) all bonds and other obligations of the Districts are paid, and (2) the operation and maintenance functions of the Districts are taken over by an incorporated city or town or by the county. *Id.*

In complete reliance on the Management Agreements, Sonoran entered into contracts (Master Utility Agreements or "MUAs") with landowners seeking utility services, constructed a utility infrastructure and undertook other obligations. Sonoran had a reasonable expectation of having hundreds of thousands of customers over a period of time.

### **Breach of Contract and Related Unlawful Acts**

Upon execution of the Management Agreements, Sonoran immediately began taking the steps, and expending the funds, needed to provide extensive utility services. In early 2004, in reliance on the Management Agreements, the course of conduct of the County and Districts and personal assurances from County elected and appointed officials, Sonoran brought in an experienced utility entity to assist in fulfilling its obligations. This investor purchased fifty percent of Sonoran and immediately supplemented Sonoran's staff.

At about this same time, Maricopa was a newly formed city and the utilities north of the Districts were acquired by an expansion minded company. Maricopa soon began demonstrating extreme favoritism to those other utilities to the detriment of Sonoran.

### **Amendments to the Management Agreements**

Certain County officials demanded that Sonoran agree to amendments to the Management Agreements. Upon Sonoran's refusal to agree to alter the thirty year binding agreements, certain County officials began what became a long term effort to hinder, disrupt and displace Sonoran; all in violation of the County and Districts' duty of good faith and fair dealing with its contractor. These efforts included, but are not limited to, altering the Districts' practices concerning expansion, taking unreasonable and outlandish positions concerning contracts and otherwise campaigning against Sonoran. Many of these same County officials were opposed to other utility endeavors by the original parent company of Sonoran elsewhere in Pinal County and appear to have illegally transferred that animosity and opposition to Sonoran's role in the Districts.

The County and Districts' unlawful actions to obtain amendments to the Management Agreements extend to the date of this Notice of Claim. In 2005, the County and the Districts have misused inapplicable statutes and demanded over \$1 million from Sonoran using its approval of Sonoran's sale as a club. These actions have been akin to extortion and demonstrate the pattern and practice of unlawful conduct by the County and Districts. These actions have damaged Sonoran.

### **Expansion**

The County, Districts and Sonoran determined that the original boundaries of the Districts were insufficient to provide needed utility services. Therefore, the Districts approved expansion of those boundaries. In 2003, the County induced Sonoran to commence the process of seeking an expansion of its 208 permit area. This inducement was represented by County filings with various regulatory agencies and Sonoran making the necessary applications. Sonoran incurred expenses and entered into numerous contracts based on this course of conduct by the County and Districts.

By letter dated November 4, 2003, Dr. Stanley Griffis informed CAAG that Sonoran's plans for two wastewater plants had been reviewed and approved. Dr. Griffis was one of the individuals who had apparent authority to deal with Sonoran on behalf of the County and Districts. Sonoran had the right to rely on the actions and representations of these individuals.

Sonoran's right to rely became absolute as the Districts and County observed and encouraged Sonoran's performance and expenditures of millions of dollars. Concurrent with Dr. Griffis November 4, 2003, letter, a 208 Amendment which would lead to expansion of the District boundaries was initiated. The Districts and the County encouraged both the construction and permitting of the facilities and the expansion of the Districts' boundaries. By

letter dated October 5, 2004, the Districts again supported and encouraged the expansion of the District boundaries.

Initially, a number of land owners in the 208 Amendment area objected to the 208 Amendment until they had utility agreements with Sonoran. The following landowners entered into Master Utility Agreements for Water & Wastewater Facilities with Sonoran for lands within the 208 Amendment area on the dates indicated with the forecast lot density indicated:

Ham Mesa	Zeitlin	January 10, 2004	2,048 lots
Amarillo Creek	Koslow	January 13, 2004	3,235 lots
Pinal 347	Brimhall & Jackson	January 14, 2004	1,200 lots
Ham Maricopa	Zeitlin	January 15, 2004	521 lots
CHI (Sunset Canyon)	Hopper	January 20, 2004	1,225 lots
Maricopa 672	Bill Lund	January 21, 2004	2,100 lots
Pecan Woods	DeAngelis	January 22, 2004	581 lots

Paragraph 17 of those agreements states:

[Sonoran] shall take all reasonable actions requested by the Developer to assist the Developer with Final Plat, ADEQ and Arizona Department of Real Estate approvals, and the Developer shall take all reasonable actions requested by the Company to assist the Company in obtaining all regulatory approvals necessary to serve the Development. Each party shall reimburse the other for all reasonable costs it incurs in providing such assistance; provided that nothing in this Paragraph 17 shall be interpreted to shift the burden or costs of obtaining necessary County, state and federal approvals for the water and wastewater treatment and service from the Company to the Developer.

Each Master Utility Agreement for Water & Wastewater Facilities also states:

Whereas, the Development is located or upon annexation will be located with the service area of the duly constituted 387 [Districts].

The developers who signed the Master Utility Agreements for the 208 Amendment areas contractually bound themselves to be served by the Districts



and Sonoran. The County, Districts and Maricopa knew of these contractual obligations.

The 387 Wastewater Improvement District passed Resolution No. 04-1305-387WWID on April 13, 2005, which unilaterally abrogated over eighteen months of joint efforts to deal with wastewater issues and abrogated Sonoran's valuable contracts and business expectancies. This action of the County and the 387 Wastewater District was done with full knowledge that Sonoran had entered into contracts with landowners concerning service in the expansion area. The County and the Districts aided certain landowners to breach those contracts. The Districts and the County had observed all planning, construction and the expansion efforts from 2003 until April of 2005 when the County and Districts made their unilateral changes which were breaches of the Management Agreements and which constitute additional torts and breaches such as interference with advantageous contractual relationships, misrepresentations, fraud, breach of fiduciary duty, breach of statutory duties, defamation, conspiracy, violation of Sonoran's due process and equal protection rights and others. These actions have damaged Sonoran.

#### **Lennar**

A lawsuit was filed by Lennar against the County, Districts, Sonoran and others. The County and Districts induced this lawsuit by their conduct and encouragement of landowner breaches of contract. The County and Districts have further breached their obligations under the Management Agreements in the manner in which they have attempted to use the Lennar lawsuit to obtain contract modifications and to force Sonoran to sell to Global. The County and the Districts have violated procurement laws in using the pretense of the Lennar lawsuit to illegally name and pay outside counsel to further harass and disadvantage Sonoran. All of these actions have damaged Sonoran.

#### **Defaults and Failures re Maricopa's Anti-Sonoran Efforts**

With the arrival of Snider as a member of the Board of Supervisors in January 2005, the County and the Districts entered into a course of conduct designed to eliminate Sonoran. This course of conduct included, but is not limited to, unlawfully assisting and encouraging the City of Maricopa and its officials to harass Sonoran, favoring rival utilities, trying to force Sonoran to sell or abandon its Management Agreements and otherwise disadvantage Sonoran.

The County and the Districts continued to attempt to force Sonoran to abandon its Management Agreements, sell its valuable assets, amend the Management Agreements in a disadvantageous way and to take other actions inconsistent with its planned long time operation of the Districts.

Sonoran entered into a sale arrangement that was contingent upon the occurrence of numerous events. The buyer was Global Water Services. The County, Districts, Maricopa and their officials unlawfully attempted to disrupt that transaction and to further penalize Sonoran by taking a number of actions inconsistent with the Management Agreements and past performance pursuant to those agreements.

Sonoran had been urged by District officials to enter into what became the Global transaction and to convert to an Arizona Corporation Commission Certificate of Convenience and Necessity as soon as possible. One Board member told Sonoran that conversion to a CC&N should take priority over providing service within the Districts. While the County and the Districts made clear their desires to eliminate the 387 Districts, state law does not allow such an action as demanded by the County and Maricopa in the manner demanded.

After Sonoran entered into the Global transaction, the County and Districts commenced actions that forced Sonoran in May 2005 to waive contingencies and immediately "close" the Global transaction with no compensation being paid for its investment at the time of the closing. The "closing" occurred in June 2005. County and District actions included, but were not limited to, a "default" inquiry in a further effort to devalue and harass Sonoran. The default effort was inconsistent with the ACC effort and not based on law. No material defaults existed at the time the County and Districts initiated their actions. The County and Districts demands that Sonoran enter into amendments to the Management Agreements were part of the continued pattern of breach of contract and tortious conduct by the County and Districts. Sonoran, to mitigate its damages, entered into such amendments only when Global assured that it would pay the monies demanded by the County and Districts.

The County and Districts' action result from the replacement in power of those in favor of using Title 48 districts to deal with the tremendous growth with those not in favor.

The County and Districts' continued anti-Sonoran conduct is a breach of the Management Agreements and has damaged Sonoran.

### **The City of Maricopa**

The City of Maricopa, in connection with issuance of a conditional use permit for a wastewater reclamation plant, demanded that the County and Districts abrogate the Management Agreements and that the Districts be eliminated and replaced with a certificate of convenience and necessity ("CC&N") with the Arizona Corporation Commission.

The City, as Stipulation No. 1 to CUP 04-01 for the Maricopa North Water Reclamation Plant No. 1, "requests Sonoran Utilities to make their best efforts to file their Arizona Corporation Commission (ACC) application no later than February 1, 2005." Sonoran understood from the City that the application requested was to be for a CC&N, and the intent was that Sonoran seek a "conversion" of the Districts from public improvement districts to a public service corporation regulated by the Arizona Corporation Commission ("ACC"). There is no precedent for the requested "conversion" process, and in fact there is no statutory authority or mechanism for the Districts to initiate such a conversion. The City knew, or should have known, that such a stipulation was illegal due to the Districts' status.

Initiation by Sonoran of a CC&N application as demanded by Maricopa was outside the scope of the Management Agreements. The ACC would not grant a CC&N that encroaches on the service area of an existing DWID, DWWID or improvement district with the right and responsibility of providing water and wastewater service.

The County and the Districts took no actions to reject such illegal demands by Maricopa. In fact, Sonoran believes that through Snider and others, the County and Districts were active participants in encouraging Maricopa's actions and demands. Snider demanded that Sonoran devote its primary efforts not to provide utility services pursuant to the Management Agreements but, rather, to complying with Maricopa's demands.

The actions of Maricopa, and its manager, Buss, also resulted in an illegal moratorium being declared by Maricopa on the issuance of building permits (see 5-17-05 Jackson letter). In late April and May of 2005, Buss also widely distributed defamatory materials concerning Sonoran, its management and ownership alleging criminal activity on the part of Sonoran and otherwise defaming Sonoran. Buss' action were both within and without his scope of employment, therefore, his actions constitute defamation per se, defamation and other actionable theories entitling Sonoran to compensatory and punitive damages. Buss actions were designed and intended to force Sonoran to waive its protective contingencies in the Global transaction and to result in Sonoran being economically disadvantaged. Buss' actions were intentional and wrongful and damaged Sonoran.

The actions of Buss and Maricopa, assisted by Snider, the County and the Districts, were designed to unlawfully force Sonoran to abandon protections it had pursuant to the Management Agreements and other valuable contract rights. Those actions also were an effort to forward the interests of private utilities favored by Buss and Maricopa.

The actions of Maricopa and Buss constitute violations of Sonoran's rights to due process, equal protection, defamation, constitute additional torts and breaches such as interference with advantageous contractual relationships, misrepresentations, fraud, breach of fiduciary duty, breach of statutory duties, conspiracy and others. Buss and Maricopa have damaged Sonoran and are liable to Sonoran for all damages resulting from their actions.

### **Other Actions**

It is anticipated that further discovery will reveal additional actions of the County, Districts, Snider, outside counsel, Buss and Maricopa that were unlawful and illegal.

### **Section 1983**

In addition to the breach of contract and related matters, the actions of the County, Districts, Snider, Maricopa and Buss are violations of Sonoran's civil rights and property rights pursuant to the United States and Arizona Constitutions and statutes, due process rights and equal protection rights. Action will be filed pursuant to the theory generally called Section 1983 (42 U.S.C. § 1983) for damages. Attorneys' fees and costs will be sought pursuant to Section 1988.

### **Damages**

In order to mitigate against the onslaught of the County, Districts and Maricopa, Sonoran was forced to give up its valuable contract rights and business expectancies. The ultimate sale to Global, due to the circumstances forced by the unlawfully acting parties, resulted in Sonoran not recovering all the value it owned and controlled as a result of the Management Agreements and other inducements and promises.

Sonoran will be entitled to recover its full costs of suit, including attorneys' fees and costs, both as a result of the breaches of contract and pursuant to Section 1988.

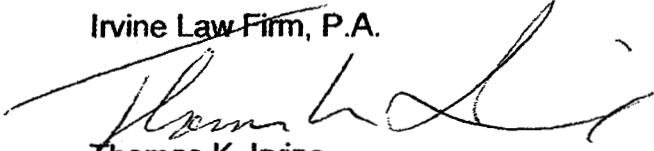
Sonoran has been damaged in the amount of \$83,000,000 as a result of these breaches, torts, loss of profits, value and other violations. The various parties liable to Sonoran are liable collectively for the total amount of damages. Therefore, the County, Districts, City of Maricopa, Snider, and Buss are jointly and severally liable for the damages to Sonoran. This matter can be settled by

Clerks  
October 7, 2005  
Page 9

payment to Sonoran in the full amount of \$83,000,000 by any one or all of the liable parties.

Sincerely,

Irvine Law Firm, P.A.



Thomas K. Irvine

cc: Chris Roll  
Denis Fitzgibbons